

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

STEVEN R. BLAIR,

8:07CV307

Plaintiff,

V.

MEMORANDUM AND ORDER

NEBRASKA DEPARTMENT OF
CORRECTIONAL SERVICES, et
al.,

Defendants.

This matter is before the court on Defendants John Doe and Jane Doe’s Motion to Dismiss. (Filing No. 19.) The entirety of the Motion is as follows:

COME NOW the Defendants, Jane Doe and John Doe, through counsel, pursuant to Fed. R. Civ. P. 12(b)(5), and hereby request that this Court enter an order dismissing this action against them for the reason that service of process was insufficient. Service upon Jane Doe and John Doe was accepted by George Green, legal counsel to the Nebraska Department of Correctional Services, at the Nebraska State Penitentiary. George Green is not authorized to accept service of process for Jane Doe and John Doe, and therefore effective service has not been made. Jane Doe and John Doe should therefore be dismissed from this action.

(Filing No. [19](#) at CM/ECF p. 1.) As set forth in [NECivR 7.1](#):

All motions, applications, requests, and petitions of a miscellaneous nature shall be filed and considered in accordance with this rule. Except as otherwise stated in this rule, a party who fails to observe the requirements of this rule may be deemed to have abandoned in whole or in part that party's position on the pending motion.

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(1) Supporting Brief.

(A) Substantial Issue of Law. A motion raising a substantial issue of law must be supported by a paginated brief filed and served contemporaneously with the motion. The brief shall not be attached to or incorporated in the motion or the index of evidence, but shall be a separate filing. The brief shall state concisely the reasons for the motion and cite the authorities relied upon. The brief shall not recite facts unless supported as provided in subparagraph (a)(2) of this rule.

(B) No Substantial Issue of Law. A party need not file a brief if the motion raises no substantial issue of law and relief is within the court's discretion. Examples include motions to which all parties consent, to withdraw as counsel to a party, for an extension of time, or for leave to proceed in forma pauperis. Should the court conclude that the motion raises a substantial issue of law, however, it may treat a party's failure to file a brief as an abandonment of the motion.

NECivR 7.1(a)(1)(A-B).

Here, Defendants John and Jane Doe seek dismissal of the claims against them due to insufficient service of process. These Defendants did not submit a separate brief, or anything other than their counsel's unsupported statements, supporting this Motion. The court has carefully reviewed the Motion to Dismiss and finds that it raises substantial issues of law.¹ Thus, a separate brief is required.² In light of the failure to comply with the Local Rules of this court, the Motion to Dismiss is deemed abandoned and is denied.

¹For instance, Defendants may have set forth in a supporting brief how service is accomplished properly on these Defendants, why service was insufficient here, and why George Green is not a proper person to serve.

²Even if the court elected to rule on the merits of the Motion to Dismiss without a separate brief, it could not do on the grossly insufficient record before it.

IT IS THEREFORE ORDERED that: Defendants John Doe and Jane Doe's Motion to Dismiss (filing no. [19](#)) is denied without prejudice to reassertion in accordance with the Federal Rules of Civil Procedure and the Local Rules of this court.

December 22, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge